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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

OCT 30 1997

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Preemption of State and Local)
Zoning and Land Use Restrictions) MM Docket No. 97-182
on the Siting, Placement and)
Construction of Broadcast)
Station Transmission Facilities)
)

**COMMENTS OF APPLE VALLEY BROADCASTING, INC.,
QUEENB RADIO, INC., SPOKANE RADIO, INC.,
SPOKANE TELEVISION, INC. AND TELEVISION WISCONSIN, INC.**

Apple Valley Broadcasting, Inc., QueenB Radio, Inc., Spokane Radio, Inc., Spokane Television, Inc. and Television Wisconsin, Inc. (collectively, the "Licensees"), through counsel and pursuant to FCC rules, hereby express their support of the rules proposed in the above-referenced proceeding.

The Licensees are commonly owned through direct or indirect stock ownership. Apple Valley Broadcasting, Inc. holds licenses for KAPP-TV at Yakima, Washington and KVEW-TV at Kennewick, Washington. QueenB Radio, Inc. is licensee of KKPL(AM), Opportunity, Washington, and KTRW-AM and KZZU-FM at Spokane, Washington. Spokane Radio, Inc. is the licensee of KXLY(AM) and KXLY-FM, Spokane, Washington. Spokane Television, Inc. is the licensee of KXLY-TV, Spokane, Washington, and Television Wisconsin, Inc. is the licensee of WISC-TV, Madison, Wisconsin. The Licensees also hold various auxiliary, FM translator, television translator and low power television station licenses.

The Licensees enthusiastically support the FCC's proposal to preempt state and local zoning regulations. FCC action is critical

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to help ensure that local and state zoning and regulatory practices and procedures do not needlessly delay the broadcast industry's transition to digital technology. This is particularly true given the tight schedule that has been established. Constructing one or more new towers and modifying existing towers within the specified time frame will be a herculean task in and of itself. If unnecessary zoning hurdles are added to the equation, this task will be complicated that much more. This is not a matter of concern only to top 30 market stations, but to all broadcasters.

The Licensees are currently reviewing their digital implementation strategies to determine the extent to which modifications to their existing towers will be necessary. In Spokane, KXLY-TV might be forced to relocate its tower closer to its community of license if the FCC fails to act on its pending petition for reconsideration of the proposed digital table of allocations.¹ The higher power levels required to provide equivalent coverage to the Spokane community in a digital environment cannot be obtained at reasonable cost at the current tower site due to its remote location. Should KXLY-TV need to relocate, current zoning practices could cause substantial delays. The proposed rules appropriately and necessarily place reasonable time limits on the deliberations of local authorities and provide a mechanism by which the FCC can expeditiously review local and

¹ See Petition for Reconsideration submitted by the Eastern Washington and Northern Idaho DTV Channel Allocation Caucus, filed June 13, 1997, Advanced Television Systems and Their Impact Upon the Existing Television Broadcast Service, Sixth Report and Order, FCC 97-115, 62 Fed. Reg. 26684 (1997) (MM Docket No. 87-268).

state decisions. These time limits are critically important to stations that face the choices that now confront KXLY.

In order to further the Commission's objectives, the proposed rules must be applied to all services, not just digital television. WISC-TV has spent many months coordinating with other users of its tower to negotiate the placement of the additional equipment needed to convert to digital. As a result, it is likely that certain other tower users will be required to relocate. If this occurs, the need for Commission preemption will be just as critical for radio and other tower users who may be forced to modify their facilities in order to accommodate the conversion to digital operations. Similarly, if KXLY-TV is forced to relocate, so too (for technical reasons) would KXLY-FM. FCC action to prevent undue delays on the local level with respect to all FCC licensed facilities will facilitate the early introduction of digital television service and help preserve other existing services to the public.

Local and state authorities will continue to play a vital role in ensuring public safety and addressing legitimate local interests. However, such authorities should not be permitted to deny broadcasters or others the ability to construct or modify towers based upon interference, RF radiation health effects or lighting/painting tower appearance concerns. These concerns are already the subject of comprehensive federal regulation. Under the proposed rules, the authority of local zoning authorities will merely be defined more precisely to help ensure that they do not

act arbitrarily or contrary to the intent of Congress to facilitate the introduction of new digital broadcast services to the public in an expeditious manner.²

The Commission must also be vigilant to ensure that local authorities demonstrate that the regulation is reasonable in relation to clearly defined and expressly stated health or safety concerns. There is a risk that such regulations will mask aesthetic or business concerns as safety-related. The Commission must be prepared to closely scrutinize such regulations because although "clearly defined", the safety objective may not be compelling.

For the foregoing reasons, the Licensees urge the FCC to adopt the proposed rules for the preemption of state and local zoning and land use regulation of the siting, placement and construction of broadcast station transmission facilities.

Respectfully submitted,

**APPLE VALLEY BROADCASTING, INC.,
QUEENB RADIO, INC.,
SPOKANE RADIO, INC.,
SPOKANE TELEVISION, INC and
TELEVISION WISCONSIN, INC.**

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² This in turn will lead to the earliest possible recovery of spectrum for auction purposes.